



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number OA/12967/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 9 October 2014**

**Decision & Reasons promulgated
On 15 May 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Houria Moradi Dezaki
(Anonymity order not made)

Appellant

and

**Entry Clearance Officer,
Istanbul**

Respondent

Representation

For the Appellant: Mr T Hodson of Elder Rahimi.

For the Respondent: Ms K Pal, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal, comprising a panel of Designated First-tier Tribunal Judge French and First-tier Tribunal Judge Birk, promulgated on 19 June 2014 dismissing the Appellant's appeal against the decision of the Respondent dated 15 May 2013 to refuse entry clearance as a spouse pursuant to section EC-P of Appendix FM of the Immigration Rules.

Background

2. The Appellant is a national of Iran born on 20 January 1977. On 11 September 2012 she was married to Mr Majid Jahanai (d.o.b. 21 February 1975), a British citizen - hereafter 'the sponsor' - in Esfahan, Iran. On 17 December 2012 the Appellant applied for entry clearance with a view to settlement as the spouse of the sponsor. The application was refused for reasons set out in a Notice of Immigration Decision dated 15 May 2013, with particular reference to paragraphs EC-P.1.1(d) and E-ECP.3.1 of Appendix FM of the Immigration Rules. Essentially the Respondent was not satisfied that the Appellant met the financial requirements of the Rules by reference to the sponsor's income, and in particular that there had been a failure to provide specified documents in accordance with the requirements of Appendix FM-SE.
3. The Appellant appealed to the IAC.
4. The First-tier Tribunal dismissed the Appellant's appeal for reasons set out in its determination. Essentially the First-tier Tribunal was satisfied that the Respondent's decision was in accordance with the Immigration Rules. It was observed that the Appellant did not seek to rely upon Article 8 of the ECHR (determination at paragraph 6).
5. The Appellant sought permission to appeal which was granted by Designated First-tier Tribunal Judge Digney on 29 August 2014.
6. The Respondent has filed a Rule 24 response dated 2 September 2014 drafted in measured and equivocal terms because of an apparent lack of access to the file.

Consideration

7. The First-tier Tribunal identified that there was one issue in the appeal: "*whether the documents in relation to the sponsor's finances could now or should now be admissible*", which did not require oral evidence and could be determined on the basis of submissions (determination at paragraph 3). (See further in this context paragraph 13 where the deficiencies in the documentation submitted with the application are identified, and the fact that "*the necessary and specified bank statements were now available and produced*" noted.)
8. The First-tier Tribunal determined that the personal bank statements that had been omitted from the application were not covered by the provision of paragraph D(b)(i)(aa) of Appendix FM-SE, and accordingly the discretion under the Rules for the Respondent's decision-maker to request the omitted documents was not at large. It could not therefore be said that the Respondent's decision was not in accordance with the law for a failure to consider the utilisation of such discretion, (Determination at paragraphs 14 and 15.) Further, after considering paragraph D(c) and D(d)(iii)(1) the Tribunal found that there was no error on the part of the Respondent in

failing to request the omitted business bank statements (paragraphs 16 and 17). The appeal was dismissed accordingly.

9. In my judgement the First-tier Tribunal's reasoning in respect of these matters is set out with simple clarity, properly reflects the (agreed) facts, follows the wording of the Rules, and is unimpeachable.
10. In so far as it is argued that the First-tier Tribunal erred in its understanding of the meaning of a 'sequence', I find no merit in the Appellant's submissions. In my judgement it was entirely open to the First-tier Tribunal - and indeed entirely reasonable - to conclude that the missing personal bank statements did not constitute documents omitted from a sequence of documents that were submitted with the application. This was not a situation of 'gaps' within the documents submitted that might have been filled; the missing documents essentially were in respect of a period prior to the sequence of documents that were submitted with the application. The application failed in this regard because the Appellant had failed to submit documents going back far enough in time; it did not fail because there were documents missing in the sequence of documents actually submitted.
11. Given the rejection of the above aspect of the challenge, it is essentially to be acknowledged that the Respondent reached a decision that was in accordance with the Immigration Rules. The Appellant is left with this alternative argument that the First-tier Tribunal should have admitted into evidence the documents now available that had been omitted from the Appellant's application, and re-evaluated the case under the Rules in light of those documents. (This was the main basis upon which permission to appeal was granted, Judge Digney alighting upon the possible significance of the words "*evidence must be provided*" at paragraph 2 of Appendix FM-SE, in the requirement "*In respect of salaried employment in the UK... all of the following evidence must be provided:*".)
12. In this context the principal submission is this: the First-tier Tribunal erred at paragraph 3 of its determination in expressing the issue in the appeal as one of admissibility of evidence; the documents now submitted were admissible because post-decision evidence was not to be excluded if it shed light on the circumstances appertaining at the time of the Respondent's decision (section 85A(2) of the Nationality, Immigration and Asylum Act 2002 - see also **DR (ECO: post-decision evidence) Morocco * [2005] UKIAT 00038**); the documents now available were demonstrative of the circumstances appertaining at the date of the Respondent's decision and showed, in the prescribed manner, the financial circumstances of the sponsor to meet the requirements of Appendix FM.
13. I can see no merit in the case as advanced on behalf of the Appellant, whether by reference to paragraphs 4 and 5 of the Grounds, the oral submissions of Mr Hodson, the observations of Judge Digney in granting permission to appeal (which in any event went no further than identifying an arguable issue), or otherwise.

14. In order to succeed in her application for entry clearance the Appellant had to meet the requirements of the Immigration Rules at the date of the Respondent's decision. In respect of the financial requirements she was, pursuant to the Immigration Rules, required: (a) to demonstrate the sponsor had a level of income in accordance with that specified under paragraph E-ECP.3.1 of Appendix FM; (b) to demonstrate that the income was from specified sources (E-ECP 3.2); and (c) to establish (a) and (b) by the production of specified evidence pursuant to Appendix FM-SE.
15. The circumstances appertaining at the date of the Respondent's decision included that the Appellant had failed to produce the specified evidence. The availability of such evidence now, does not alter the circumstances appertaining at the date of the Respondent's decision. The post-decision production of the omitted bank statements cannot alter the fact that at the date of the Respondent's decision the Appellant did not satisfy the requirements of the Immigration Rules because she had not complied with those requirements in respect of specified evidence.
16. I find no error of law in the approach taken by the First-tier Tribunal.

Notice of Decision

17. The decision of the First-tier Tribunal contained no material error of law, and accordingly the decision stands.
18. The appeal is dismissed.
19. No anonymity order is sought or made.

Deputy Judge of the Upper Tribunal I. A. Lewis

8 May 2015